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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	
Federal-State Joint Board on Universal Service	CC Docket No. 96-45
1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Support Mechanisms	CC Docket No. 98-171
Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990	CC Docket No. 90-571
Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size	CC Docket No. 92-237 NSD File No. L-00-72
Number Resource Optimization	CC Docket No. 99-200
Telephone Number Portability	CC Docket No. 95-116

COMMENTS OF EXCEL COMMUNICATIONS, INC.

Excel Communications, Inc.

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COMMENTS OF EXCEL COMMUNICATIONS, INC.

Excel Communications, Inc., on behalf of itself and its operating companies (collectively "Excel"), hereby submits comments in the above-captioned proceeding. The

Commission's Notice of Proposed Rulemaking (the "*NPRM*")[1] raises several significant issues concerning the basis for assessing universal service fund ("USF") contributions, the regulation of carriers' billing and collection mechanisms, and the inclusion and exemption of certain groups, such as Lifeline customers, from the USF revenue pool.

INTRODUCTION AND SUMMARY

Excel provides a variety of telecommunications services and is the one of the largest long distance carriers in the United States. Excel serves primarily residential and small business long-distance customers, many of which are located in rural and sparsely-populated areas throughout the country. As such, Excel has a direct interest in this proceeding.

Excel supports the Commission's efforts to improve the accuracy with which USF obligations are imposed on telecommunications carriers. At the same time, Excel believes that some of the ideas mentioned in the Commission's *NPRM* would undermine competition by unfairly disadvantaging certain carriers, impose more regulation and costs on carriers, and also therefore on consumers, result in more confusing customer bills, and unfairly exempt certain subscribers and carriers.

Excel supports the collection of USF funds based on current or projected revenues (rather than historic revenues), and strongly opposes the adoption of a per-line charge, which would undermine competition by penalizing carriers that serve low-volume subscribers such as residential and small-business users. Indeed, Excel believes that the current revenue-based system can be improved by eliminating contributions based on historical revenues and excluding

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1 *In the Matter of Federal-State Board on Universal Service*, Notice of Proposed Rulemaking, CC Docket No. 96045; CC Docket 98-171; CC Docket No. 90-571; CC Docket No. 92-237 (NSD File No. L-00-200); CC Docket No. 99-200; CC Docket 95-116; FCC 01-145 (rel. May 8, 2001) ("*NPRM*").

uncollected revenues from the USF revenue pool. Reliance on historic revenues is simply not suited to an environment in which new market entrants, be they wireline, wireless or Internet-based providers, come on the scene every day. The use of projected revenues would eliminate much of the inaccuracy that currently exists with historic revenues. This inaccuracy is leading to a situation where some carriers will have a significant competitive advantage over other carriers with regard to USF contributions. By switching to a projected-basis mechanism, this anti-competitive advantage will be eliminated.

Additionally, Excel encourages the Commission to avoid excessive regulation of carriers' billing and collection mechanisms. It is likely that such regulation will not be better than current regulations. On the contrary, excessive regulation may prove to be costly and confusing to consumers, at the same time denying carriers the discretion to accurately and efficiently collect USF charges from their subscribers. Excel believes this discretion is necessary in order to allow carriers to recover USF fees in a manner that is consistent with market and consumer demands, and that limits the cost of billing and collection, which in turn results in lower rates for consumers. Finally, it is not clear that the exemption of Lifeline customers from this revenue base could be accomplished without significant costs of implementation and day-to-day administration – costs that may very well outweigh any benefits associated with this proposal.

DISCUSSION

I. The Commission Should Continue to Base Collection of USF Fees on Carrier Revenues and Avoid the Adoption of a Per-Line Charge.

Excel supports the Commission's efforts to improve the accuracy of the USF contribution methodology, reduce administrative burdens to carriers, and ensure that assessment mechanisms fulfill Congress' mandate that contributions be assessed on an equitable and nondiscriminatory basis.[2] With these goals in mind, Excel strongly urges the Commission to retain the existing revenue-based contribution methodology and to reject any proposals for a flat-fee, or per-line charge, as discussed in the Commission's *NPRM*.[3] Excel does not believe that the adoption of a flat-fee assessment would result in a more equitable recovery of USF contributions.[4] Rather, the opposite result would occur – those carriers serving low volume subscribers, such as rural, residential and small business consumers, would bear a disproportionate amount of USF costs. A flat-fee assessment based on telecommunications lines will penalize low-volume customers by raising the cost to those consumers who are the lowest volume users of interstate services. This is directly contradictory to one of the policy cornerstones of the USF.[5]

The adoption of a flat-fee assessment would compound the problems already faced by carriers who serve rural and low-density areas. Profit margins in those areas are already slim for these subscribers. Given industry concerns that fewer carriers are willing to serve low-volume subscribers, particularly in rural and other sparsely-populated areas, any increase in costs will disserve the public interest.

Excel believes that the current revenue-based contribution mechanism has proven to be both equitable and relatively uncomplicated to administer. The adoption of a per-line flat fee would be difficult and expensive to implement, with a disproportionate burden being

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2 *NPRM* at ¶ 17; *see also*, 47 U.S.C. § 254.

3 *Id.* at ¶¶ 25 – 30.

4 *Id.* at ¶ 28.

5 47 U.S.C. § 254(b)(3) ("Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high-cost areas, should have access to telecommunications and information services … that are reasonably comparable to … and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.")

imposed on low-volume carriers. Not only would the Commission have to devise a way to classify the various telecommunications lines in order to equitably distribute the cost of contributing to the USF, but carriers would have to overhaul their billing systems and obtain a significant amount of new information to implement such an approach. The cost of migrating to and then administering a line-classification mechanism would greatly exceed the current cost and burden of administering a revenue-based collection mechanism.

A per-line flat fee would be insensitive to the characteristics of the market a carrier serves, forcing all consumers to pay roughly the same fee, whether they are a large corporation with thousands of dollars in monthly interstate calls, or a rural family who rarely places calls.

Furthermore, the adoption of a flat-fee charge does not conform to the recent trend away from per-line carrier charges. For example, the Commission largely repealed the presubscribed interexchange carrier charge ("PICC")[6] last year as part of access charge reform, due at least in part to the numerous administrative problems and higher costs associated with per-line charges.[7] In eliminating the PICC, the Commission noted that low-volume residential and single-line business subscribers directly benefit from the elimination this per-line pass-through charge.[8]

In deciding whether to keep the current revenue-basis mechanism or switch to a flat-fee mechanism, Excel urges the Commission to defer to its prior conclusion that a USF

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6 The PICC was established in 1997; *see In the Matter of Access Charge Reform*, First Report and Order, 12 FCC Rcd. 15982 (rel. May 16, 1997).

7 *In the Matter of Access Charge Reform*, Sixth Report and Order, 15 FCC Rcd. 12962 (rel. May 31, 2000).

8 *Id.* at ¶ 34.

assessment based on gross-billed end-user telecommunications revenues is competitively neutral and easy to administer,[9] whereas flat-rate charges, such as per-minute or per-line charges, are not competitively neutral because they favor certain services or providers over others.[10] The facts behind these conclusions have not changed since the Commission considered them in 1997, and Excel believes that any change from a revenue-based mechanism to a flat-fee one will be costly, difficult to administer, and anti-competitive.

II. USF Fees Should be Based on Projected Revenues and Should Not Include Uncollected Revenues.

Although Excel favors retaining the current revenue-based USF charge mechanism, it also believes the accuracy of this mechanism can be improved. Therefore, Excel supports the Commission's proposed modifications to base USF contributions on current or projected revenues, rather than historical revenues, and to remove uncollected revenues from the USF revenue pool.

Excel supports the proposal to require carriers to contribute to the USF based on current or projected revenues, as opposed to the historical revenue mechanism now in place. Changes in the industry, including new entrants to the long-distance market, such as the Regional Bell Operating Companies ("RBOCs"), make a historical revenue mechanism inaccurate and anti-competitive. The current USF mechanism will permit these large carriers to enter the market and offer prices which do not reflect any significant USF contribution, thereby skewing competitive market conditions. At the same time as the RBOCs are entering the market with the competitive advantage of low to non-existent historical interstate revenues, other competitive

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9 *In the Matter of Federal-State Board on Universal Service*, Report and Order, 12 FCC Rcd. 8776, 9207 at ¶ 844 (rel. May 8, 1997) ("*Universal Service Order*").

10 *Id.* at 9210, para. 852.

carriers will be experiencing a decline in market share. This means that the competitive carriers are paying inflated USF fees based on historical data, data which does not mirror or track what revenues they will necessarily generate. Because of rapid changes in the market, historical data that is just six months old can be obsolete and adversely affect competition. In effect, the current USF mechanism hits competition with a "double whammy" by both unfairly advantaging new RBOC entrants while unfairly harming existing long distance competitors.

Excel supports the proposal to assess universal service contributions based on current or projected revenues.[11] A current or projected revenue basis is more accurate, providing the Universal Service Administrator with up-to-date information that will assist in making USF assessments. Furthermore, this accuracy will level the playing field by ensuring that carriers contribute to the USF based on a much closer approximation of actual revenues. Although a projected revenue basis requires a true-up of fees when actual numbers become available to ensure accuracy and fairness, Excel does not believe the true-up process will be difficult or burdensome. A projected revenue mechanism is not a foreign concept in the telecommunications industry, where projected revenues are continually utilized in determining rates. Therefore, Excel believes switching to a projected revenue basis would be both familiar to carriers and relatively simple to implement. Excel considers any possible disadvantages[12] to adopting a projected revenue mechanism to be significantly outweighed by the long-run cost savings and competitive benefits associated with projected revenues.

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11 *NPRM* at ¶ 20.

12 The administrative costs of projecting and truing-up revenues may be slightly higher than the current historical revenue mechanism but projected revenues are much more accurate. A true-up of revenues ensures that carriers make accurate projections, and the Commission may adopt penalties for carriers that might be tempted to abuse the system by consistently "low-balling" projected revenues.

Retaining a historical revenue mechanism will only exasperate the current situation and make it much more difficult for competitive carriers to compete in the market, eliminating consumer choice and competition. Because this is abhorrent to the policies behind the USF and Congressional telecommunications policy in general, the Commission should adopt a mechanism based on current or projected revenues.

Another proposed modification to the current revenue-based mechanism would limit USF contributions to a percentage of collected, rather than gross-billed revenues.[13] Excel supports this proposal and believes that uncollected revenues should be excluded from the USF revenue pool. Because a carrier's ability to pay USF fees is based on revenues they collect from subscribers, a revenue basis that excludes billed but uncollected revenues would be more accurate and less costly for carriers. The current recovery mechanism which is based on gross billed revenues is competitively unfair for carriers that must pay USF contributions on revenues that are billed but not received. The Commission should not penalize carriers through disproportionate USF assessments simply because they choose to serve market segments with a higher incidence of uncollected revenues. By modifying the collection mechanisms to exclude uncollected revenues, carriers will not have to bear the cost of shortfalls to the USF pool and consumers will not have to pay excessive and often inconsistent USF fees as part of their telecommunications bills.

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13 *NPRM* at ¶ 22.

III. The Commission Should Avoid Excessive Regulation of Carriers' Billing and Collection Mechanisms.

Excel strongly believes that carriers must retain the flexibility they have today to determine how USF contributions are recovered from subscribers. Excel does not believe that a uniform line-item charge, established by the Commission, is necessary to ensure "just and reasonable" rates under Section 201(b) of the Communications Act of 1934, as amended,[14] nor would such a uniform charge meet the recovery needs of carriers, or create a simpler, less-complicated bill for consumers. Furthermore, assuming there is any benefit to adopting a uniform regulation, the costs of such a proposal would most definitely outweigh any possible benefit to consumers.

Carriers must retain the maximum flexibility and discretion to recover USF fees from subscribers in order to cover the costs they incur in contributions to the USF, as well as administrative costs for complying with USF recovery mechanisms. Because of the dynamic nature of the USF contribution mechanism, which is based on a changing percentage of changing revenues, and the constantly changing make-up of services delivered to subscribers, which is determined by the marketplace, carriers must have the option to adjust USF fees collected from their customers. Any effort by the Commission to establish one uniform fee applicable to all carriers and all subscribers would be at best, costly and time consuming, and at worst, futile.

In the Commission's *Truth-in-Billing Order*,[15] the Commission declined to adopt specific rules restricting a carrier from charging a line item assessment in an amount greater than

[14] 47 U.S.C. § 201(b).

the carrier's USF assessment rate citing comments that (1) it may be impractical to accurately allocate some line-item charges to individual customers on a per-bill basis because USF contributions may depend on variables whose values are not known at the time the carrier issues a bill; and (2) carriers should be allowed to account for billing and administrative expenses in determining the amount of any line-item assessment for universal service.[16] The Commission should continue to allow carriers to maintain the necessary flexibility and discretion in establishing their own USF recovery fees and, absent any evidence of abuse of this discretion by a carrier,[17] refrain from imposing unnecessary regulations on the collection of USF fees from subscribers.

Flexibility and discretion allow carriers to choose whether to recover USF fees through increased rates or by a specific line-item charge on customer's bills. Often, the carrier's decision is based on its knowledge of consumer preferences, as well as the cost of billing. In many states, this discretion is already limited by state regulations that require specific line-item charges or explicit language on customers' bills. The proposal to adopt uniform regulations regarding customer bills would add an overlapping, and possibly inconsistent layer of regulation to these bills, making it more costly for carriers, and possibly more difficult for consumers to understand. For example, if a state requires a carrier to include a line-item charge on its customer bills labeled "Universal Connectivity Charge" for intrastate charges and the Commission imposes a similar requirement, calling it the "Federal Universal Service Charge" for

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(...continued)

15 *In the Matter of Truth-in-Billing and Billing Format*, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd. 7492, 7528 at ¶ 57 (rel. May 11, 1999) ("*Truth-in-Billing Order*").

16 *Id.*

interstate charges, carriers will not have the option of limiting billing costs by combining both charges in a single line-item. Furthermore, inconsistent descriptions will cause confusion to the subscriber, which is the exact opposite of the result sought by the Commission.

If the Commission adopts new regulations mandating specific language for consumer bills, such regulations will undoubtedly be costly to implement,[18] forcing carriers to impose higher prices on consumers for new verbiage or additional line items that add significantly to carriers' billing costs. With that in mind, Excel recommends that the Commission conduct a rigorous cost-benefit analysis for these proposals and only adopt requirements that will not result in additional costs to consumers. Additionally, the Commission should carefully avoid any requirements that would stifle the development of alternative and innovative billing mechanisms such as on-line services and automated voice assistance accessed through toll-free numbers. These alternatives offer important, and often efficient choices for consumers.

Two years ago, the Commission considered whether standardized labels for USF charges should be adopted in its *Truth-in-Billing Order*[19] and specifically declined to take a "prescriptive approach,"[20] stating that it "prefer[s] to afford carriers the freedom to respond to

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(...continued)

17 Excel believes that any abuse of this discretion by a carrier should be dealt with on a case by case basis rather than a unilateral adoption of regulations aimed at all carriers.

18 Many carriers bill their customers indirectly through incumbent local exchange carriers (ILECs) who charge providers for billing services on a volume basis. In 1999, Excel typically paid at least 2.4 cents for each toll call line item included on a bill and 25 to 35 cents for each line item unrelated to the documentation of toll calls. Additionally, Excel pays an average of 27 cents for "bill rendering" services in order to have a summary sheet and logo printed on its customer bills.

19 *Truth-in-Billing Order* at 7522, para. 49.

20 *Id.* at 7526, para. 55.

consumer and market forces individually."[21] Excel believes that consumer and market forces continue to have a direct influence on how carriers choose to recover USF fees from their subscribers and that any regulation aimed at mandating specific language for USF fees will only result in unwieldy, confusing and expensive consumer bills. The *Truth-in-Billing Order* established specific rules regarding consumers' telecommunications bills, and Excel believes that any abuse of these rules is more properly addressed by the Enforcement Bureau rather than the adoption of a sweeping and excessive regulatory scheme.

IV. Lifeline Customers Should Not be Exempt from Paying USF Fees.

Although Excel strongly supports the Lifeline program and the important benefits it provides qualifying low-income consumers, Excel does not support the proposal that Lifeline customers be exempted from USF fees. Currently, carriers support Lifeline customers by subsidizing qualifying consumers' monthly basic phone service.[22] Exempting Lifeline customers from USF fees puts an undue burden, in terms of cost and administration, on the carriers. In particular, the administrative costs of identifying and tracking Lifeline customers makes such an exemption prohibitively expensive to implement. Because individuals qualifying for the Lifeline program change on a frequent basis, carriers would have to spend countless hours trying to track these customers, and update their data bases and billing software to account for these changes, if such identification could be done at all. Given the excessive monetary and administrative costs to carriers, and the resulting expense to customers who ultimately pay higher fees to cover such costs, the Commission's proposal to exempt Lifeline customers from USF payments raises significant concerns and at this juncture, appears to be unwarranted.

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21 *Id.*

22 47 C.F.R. § 54.401

CONCLUSION

For the reasons stated herein, Excel urges the Commission to retain the current revenue-based contribution mechanism, albeit with changes to eliminate the historic revenue basis and exclude uncollected revenues. With regard to the billing and collection of USF fees from customers, Excel does not support any mandated charge or billing language to be imposed on carriers, nor does it believe that Lifeline customers should be exempt from USF charges. Finally, Excel supports the proposal to review the current safe harbor for wireless providers in light of the enormous increase in interstate revenues from the offering of bundled services to wireless customers.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Heather M. Wilson , counsel for Excel Communications, Inc., hereby certify that a true and correct copy of the foregoing Comments of Excel Communications, Inc. was sent this 25th day of June, 2001, by first class mail, postage prepaid to the following:

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